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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 1573
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Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- attorney or agent of record.
Registration number 45,624
- attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34

/Leslie Paul Gehman/

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04/01/2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Steve Dispensa Confirmation No.: 5595
Application No.: 09/981,015 Group No.: 2617
Filed: 10/17/2001 Examiner: Sharad K. Rampuria
For: PROBE DEVICE FOR DETERMINING CHANNEL INFORMATION IN A
BROADBAND WIRELESS SYSTEM

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Introductory Comments

In response to the final Office Action dated January 12, 2009, the Appellant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. A Notice of Appeal under 37 C.F.R. § 41.31(a)(1) is being filed herewith. The review is requested for the reasons provided in the following remarks.

Remarks

Claims 1-20 and 41-60 remain pending. Claims 1-20 and 41-60 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,104,727 A (Moura) in view of PCT Application Publication No. WO 11/67449 A1 (Fabiano). (See pages 2-7 of the final Office action.) The Appellant respectfully requests review of the rejections in view of a clear error by the Examiner, and requests allowance of claims 1- 20 and 41-60 for at least the following reasons.

Moura and Fabiano Do Not Disclose Determining Channel Information Describing Actual Use of Each of a Plurality of Channels in the Broadband Wireless System by Each of a Plurality of Users

Independent claim 1 provides, in part, a method of operating a probe device in a broadband wireless system. The method includes receiving a message, processing the message to determine channel information describing actual use of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing actual use includes a per-user breakdown of a time spent in each channel, storing the channel information in a memory in the probe device, and transferring the channel information from the memory to a user system. Independent claim 41 contains similar limitations with respect to a probe device for use in a broadband wireless system.

The final Office Action correctly notes "Moura doesn't teach specifically, receiving a message; processing the message to determine channel information describing actual use of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing actual use includes a per-user breakdown of a time spent in each channel." However, the final Office Action goes on to state "...Fabiano advocates in an analogous art, that receiving a message; processing the message to determine channel information describing actual use of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing actual use includes a per-user breakdown of a time spent in each channel. (Pg. 5; 1-9, Pg. 14; 3-19)..." The Appellant respectfully traverses this interpretation of the prior art and the application of this prior art to the present claims.

Fabiano actually advocates the use of a local arbitration server to subdivide a time slice

assigned for its use. This local arbitration server *sets* the file transmission rate to be *assigned* to a particular transmission. As Fabiano summarizes, “In essence, this system provides an overlay of *time slicing* and *rate allocation* by which the distributed control system can *specify* a window of time and a rate in order to ensure better file transmission.” (Fabiano, page 5, lines 6-9, emphasis added.) Likewise, on page 14, lines 5-7, Fabiano states that “each local arbitration server *assigns* its jobs a rate and may further *subdivide* the jobs into different time slots and at different rates to make more efficient use of the resources allocated to that local arbitration server.” (Emphasis added.)

Fabiano describes an arbitration server *setting* file transmission rates and time slots and *assigning* these rates and time slots to particular transmissions as a method of allocating bandwidth to different processes. There is no indication that these processes actually use all of the bandwidth allocated to them. For example, some processes may use part, but not all, of the time slot allocated to them by the arbitration server. Fabiano provides no mechanism for detecting such an occurrence. In contrast, claim 1 requires “processing the message to determine channel information describing *actual use* of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing *actual use* includes a per-user breakdown of a *time spent in each channel*.” Fabiano assigns transmission rates and time slots to different processes, but provides no mechanism for discovering the *actual use* of those time slots by the individual processes.

In the Response to Remarks section of the final Office Action (pages 7 and 8), Fabiano was quoted from page 23, line 22 to page 24, line 4. The final Office Action stated “Thus, it is evidently, the explanations above is directed to telecommunications systems and methods for a distributed-hierarchical scheduling control system that monitors the network and adapts dynamic rate allocation, time slicing and logical framing to optimize system resources. And also dynamic network transport resource allocation for communication, by adjusting initially allocated bandwidth or time slice by geographically distributed controllers to optimize file transmission on network, that positively, edify by FABIANO. Hence, it is believed that FABIANO still teaches the claimed limitations.” The Appellant respectfully traverses this characterization of Fabiano.

As stated above, Fabiano describes an arbitration server setting file transmission rates and time slots and assigning these rates and time slots to particular transmissions as a method of allocating bandwidth to different processes. Fabiano does not determine channel information

describing an actual use of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing actual use includes a per-user breakdown of a time spent in each channel, as required by claim 1. Fabiano describes dynamic rate allocation but does not determine the actual use of each channel in a per-user breakdown of time spent in each channel. Therefore, Fabiano cannot render claim 1 unpatentable.

Thus, based on at least the reasons presented above, the Appellant contends that independent claims 1 and 41 are allowable in view of Moura and Fabiano, and such indication is respectfully requested.

Claims 2-20 depend from independent claim 1, and claims 42-60 depend from independent claim 41, thus incorporating the features of their respective independent claims. Thus, the Appellant asserts claims 2-20 and 42-60 are allowable for at least the same reasons as claims 1 and 41 discussed above, and such indication is respectfully requested.

Conclusion

Based on the above remarks, the Appellant respectfully requests the reversal of the final rejection of claims 1-20 and 41-60.

The Assignee hereby authorizes the Office to charge Deposit Account No. 21-0765 the appropriate fee under 37 C.F.R. § 41.20(b)(1) for the Notice of Appeal filed herewith. The Appellant believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765.

Respectfully submitted,

/Leslie Paul Gehman/

SIGNATURE OF PRACTITIONER

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